

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

United States Patent No. 5,784,808

Issued: 28 July 1998

Inventor: Stan Hockerson, a U.S. citizen, of Albuquerque, NM

Assignee: Hockerson-Halberstadt, Inc. (a Louisiana corporation)

FOR: "Independent impact suspension athletic shoe"

ATTORNEY DOCKET NO.: A09027US (99413.1)

Declaration of Seth M. NEHRBASS, Patent Attorney

I am a registered patent attorney working for the inventor and owner of the above-referenced patent. My registration number is 31,281. I have been registered to practice before the U.S. Patent and Trademark Office in patent cases since 1984.

On or about 21 November 2008 I was contacted by James E. "Jim" Uschold, an attorney who on or about 8 August 2008 filed a lawsuit by Hockerson-Halberstadt, Inc. and Standon LLC against New Balance Athletic Shoe, Inc. asserting infringement of United States Patent No. 5,784,808. He informed me at that time that New Balance alleged in pleadings that United States Patent No. 5,784,808 had expired due to non-payment of a maintenance fee. We discussed options to pay the fee late. I also asked him to try to get Hockerson-Halberstadt, Inc. to review its records to try to determine why the fee was apparently not paid.

On or about 10 December 2008, I was again contacted by James E. Uschold, with information forwarded from Johnny Halberstadt. Since that time, I have been working on trying to determine why the second maintenance fee in United States Patent No. 5,784,808 was apparently not timely paid and conducting research to determine whether it could be paid late.

Specifically, on or about 10 December 2008, I responded to Jim Uschold's e-mail message.

On or about 11 December 2008, I asked Jim Uschold to contact me to discuss the circumstances involving the apparent non-payment of the second maintenance fee in United

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On or about 16 December 2008, I spoke with Jim Uschold and conducted research.

On or about 18 December 2008, I spoke with Stan Hockerson, the patentee, regarding facts surrounding apparent non-payment of the second maintenance fee in United States Patent No. 5,784,808. Stan Hockerson told me then that he would look through his records to see if he could find anything which would indicate whether the second maintenance fee in United States Patent No. 5,784,808 was paid and, if not, any information about the second maintenance fee in United States Patent No. 5,784,808.

On or about 6 January 2009, I spoke with Stan Hockerson regarding the results of his records search. He was unable to find in his records any evidence of payment of the second maintenance fee in United States Patent No. 5,784,808. He was unable to find in his records any information about the second maintenance fee in United States Patent No. 5,784,808.

On or about 6 January 2009, I spoke with Richard Backus, the patent attorney for the patentee and the assignee of United States Patent No. 5,784,808. He was unable to find in his files any evidence of payment of the second maintenance fee in United States Patent No. 5,784,808. He was unable to find in his files any information about the second maintenance fee in United States Patent No. 5,784,808, such as reminder letters sent to Stan Hockerson and Hockerson-Halberstadt, Inc.

On or about 7 January 2009, I spoke with Stan Hockerson regarding payment of the second maintenance fee in United States Patent No. 5,784,808. I worked on preparing declarations that day. Our office began working as well on the petition to accept late payment of the maintenance fee and on the showing of unavoidable delay.

On or about 8 January 2009, I spoke with Stan Hockerson regarding payment of the second maintenance fee in United States Patent No. 5,784,808. I also received and reviewed a fax from Stan Hockerson relating to payment of the first maintenance fee in United States Patent No. 5,784,808.

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On or about 9 January 2009, I spoke with Stan Hockerson regarding payment of the second maintenance fee in United States Patent No. 5,784,808, and I sent him an e-mail message.

On or about 14 January 2009, our office spoke with a patent searcher in Washington regarding searching records on the USPTO relating to payment of the second maintenance fee in United States Patent No. 5,784,808.

On or about 16 January 2009, our office continued preparation of the declarations.

On or about 23 January 2009, the patent searcher in Washington transmitted the results of his search regarding the payment of the second maintenance fee in United States Patent No. 5,784,808. The patent searcher notified us that there was nothing about the maintenance fee in the file history. He was able to obtain the Notice of Patent Expiration, dated 30 August 2006, and a copy of the face of the file history and contents listing, showing there was nothing in the contents regarding maintenance fee payments.

On or about 26 January 2009, our office spoke with a person in the Maintenance Fee Branch of the United States Patent and Trademark Office for further information regarding the maintenance fees for United States Patent No. 5,784,808. Our office was informed that the Patent Office did not keep copies of notices on file that were sent out by the Patent Office regarding payments of maintenance fees.

On or about 2 February 2009, I corresponded via e-mail with Jim Uschold.

On or about 3 February 2009, I continued preparing the petition to accept delayed payment of maintenance fee.

On or about 6 February 2009, I spoke with Jim Uschold regarding the petition. I also spoke with Stan Hockerson regarding the petition.

On or about 9 February 2009, I continued preparing a petition to accept delayed payment of maintenance fee in United States Patent No. 5,784,808.

On or about 10 February 2009, I continued preparing the petition to accept late payment

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of maintenance fee. I corresponded via e-mail with Jim Uschold and spoke with him.

On or about 11 February 2009, I continued to work on declarations of Stan Hockerson, Johnny Halberstadt, Richard Backus, and myself. Our office reviewed the current assignment information for United States Patent No. 5,784,808.

On or about 12 February 2009, I spoke with Richard Backus regarding his file history for United States Patent No. 5,784,808. I also corresponded via e-mail with Stan Hockerson.

On or about 13 February 2009, I received a fax from Richard Backus regarding this matter. I spoke with Richard Backus regarding his docketing system and the docketing error that occurred with United States Patent No. 5,784,808. Our office began preparing a power of attorney for United States Patent No. 5,784,808. I spoke with Stan Hockerson. I corresponded via e-mail with Johnny Halberstadt.

On or about 16 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808.

On or about 17 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808. I spoke with Stan Hockerson. I also spoke with Richard Backus.

On or about 18 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808. Our office worked on filing a Power of Attorney for United States Patent No. 5,784,808.

On or about 19 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808.

On or about 20 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808.

On or about 24 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808. I corresponded via e-mail with Stan Hockerson and Johnny Halberstadt regarding their declarations.

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On or about 25 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808.

On or about 26 February 2009, I continued preparing the declarations regarding the late maintenance fee payment for United States Patent No. 5,784,808. I corresponded via e-mail with Stan Hockerson and Johnny Halberstadt regarding their declarations. I also spoke with Johnny Halberstadt regarding the declarations.

On or about 27 February 2009, I received a signed declaration from Stan Hockerson.

On or about 2 March 2009, I spoke with Johnny Halberstadt regarding his declaration.

On or about 3 March 2009, I corresponded via e-mail with Richard Backus regarding his declaration. I also spoke with Richard Backus regarding the declaration. I also received a signed declaration from Johnny Halberstadt.

On or about 4 March 2009, I received a signed declaration from Richard Backus.

On or about 25 March 2009, I learned that the Petition filed 4 March 2009 had been dismissed. I attempted to retrieve a copy of the decision through Image File Wrapper of Private PAIR, but it was not available.

On or about 26 March 2009, I received a copy of the Decision dated 23 March 2009 dismissing the Petition.

On or about 27 March 2009, I sent a copy of the Decision dismissing the Petition to Richard Backus so that he could provide the information requested at page 4 of the Decision.

On or about 30 March 2009, I received some information from Richard Backus relating to the information requested at page 4 of the Decision.

On or about 30 March 2009, I corresponded with Richard Backus regarding this information.

On or about 1 April 2009 I spoke with and corresponded with Richard Backus regarding this information.

On or about 3 April 2009 I reviewed this information and worked on a revised declaration

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of Richard Backus regarding this information.

On or about 4 April 2009 I reviewed this information and worked on a revised declaration of Richard Backus regarding this information. I also worked on my revised declaration, and revised declarations of Stan Hockerson and Johnny Halberstadt.

On or about 9 April 2009 I received and reviewed an e-mail message and fax from Richard Backus.

On or about 10 April 2009, I worked on the declarations.

On or about 13 April 2009, I worked on the declarations and responded to the e-mail message of 9 April 2009 from Richard Backus, sending him a revised draft declaration.

On or about 18 April 2009, I worked on a revised declaration of Richard Backus, and I responded to his e-mail of the evening of 15 April 2009 by transmitting to him another draft declaration.

On or about 19 April 2009, I reviewed an e-mail sent by Mr. Backus on 18 April 2009 and a fax from him with his signed declaration, also sent on 18 April 2009. I also worked on my revised declaration, revised declarations of Stan Hockerson and Johnny Halberstadt, and a Petition for Reconsideration. I corresponded via e-mail with Stan Hockerson and Johnny Halberstadt. I also spoke by telephone with Stan Hockerson and with Johnny Halberstadt.

On or about 22 April 2009 I corresponded via e-mail with Stan Hockerson and Johnny Halberstadt regarding the declarations.

On or about 23 April 2009 I corresponded via e-mail with Stan Hockerson and Johnny Halberstadt regarding the declarations.

On or about 24 April 2009 I corresponded via e-mail with Stan Hockerson and Johnny Halberstadt regarding the declarations.

On or about 27 April 2009 I spoke with Stan Hockerson and corresponded via e-mail with Stan Hockerson and Johnny Halberstadt regarding the declarations. I also received signed declarations from them on that date.

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On or about 28 April 2009 I worked on my declaration and the Petition for Reconsideration.

On or about 29 April 2009 I revised and corresponded regarding the Petition for Reconsideration.

On or about 30 April 2009 I revised the Petition for Reconsideration and finalized my declaration.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the patent.

/Seth M. NEHRBASS # 31,281/

Seth M. NEHRBASS, Patent Attorney, Reg. No. 31,281

GARVEY, SMITH, NEHRBASS & NORTH, L.L.C.

3838 N. Causeway Blvd., Suite 3290

Metairie, LA 70002

Tel.: (504) 835-2000

Fax: 504-835-2070

www.neworleanspatents.com

30 April 2009

Date

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